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OFFICE OF PETITIONS

In re Application of :
Manzone et al. : DECISION ON APPLICATION
Application No. 10/553,413 : FOR
Filed: September 20, 2006 : PATENT TERM ADJUSTMENT
Atty Docket No. 082652-243206 :

This is a decision on the "Request for Recalculation of Patent Term Adjustment," filed February 17, 2009. Applicants request that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from seventy-seven (77) days to eighty-three (83) days.

The application for patent term adjustment is **GRANTED**.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the notice of allowance is **eighty-three (83)** days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On November 17, 2008, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date is 77 days. On February 17, 2008, applicants timely submitted the instant application for patent term adjustment¹. Applicants maintain that because the Office action mailed on June 20, 2008 was re-mailed on June 26, 2008 and the period for response restarted, applicant's delay (in not

¹ PALM records indicate that the Issue Payment was also filed on February 17, 2009.

responding until June 26, 2008) was 31 days, not 37 days as used in the Office's initial PTA calculation.

The record shows that the patent issuing from this application is subject to a terminal disclaimer.

In this instance, applicants are correct that any delay should be calculated based on the date of the Restarted Response Period and not based on the date of the mailing of the original Office action. As their response was received three months and 31 days outside of the Letter Restarting Period for Response (the re-mailed Office action), applicant delay within the meaning of §1.704(b) was 31 days. The period of reduction of 37 days has been removed and the period of reduction of 31 days has been entered.

In view thereof, the correct determination of patent term adjustment at the time of the mailing of the notice of allowance is 83 days.

Receipt of the \$200.00 fee set forth in 37 CFR 1.18(e) is acknowledged. No additional fees are required.

The application is being forwarded to the Office of Data Management for issuance of a patent. The patent term adjustment indicated on the patent (as shown on the Issue Notification mailed about three weeks prior to patent issuance) will include any additional adjustment accrued both for Office delay in issuing the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and for the Office taking in excess of three years to issue the patent (to the extent that the three-year period does not overlap with periods already accorded).

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3219.



Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of REVISED PAIR Screen